

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :

:

VS : NO. 3:15-CR-108

:

DARIAN TENSLEY, :

Defendant :

BEFORE: HONORABLE JAMES M. MUNLEY
UNITED STATES DISTRICT JUDGE

PLACE: SCRANTON, PENNSYLVANIA

PROCEEDINGS: GUILTY PLEA/SENTENCING

DATE: WEDNESDAY, JUNE 15, 2016

APPEARANCES:

For the Government: TODD K. HINKLEY, ESQ.
Assistant U.S. Attorney
William J. Nealon Federal Building
Suite 311
Scranton, PA 18501

For the Defendant: INGRID S. CRONIN, ESQ.
Federal Public Defender
201 Lackawanna Avenue
Suite 317
Scranton, PA 18503

WITNESS INDEXFOR THE GOVERNMENTDIRECTCROSS

JAMES SIEDEL

20

25

FOR THE GOVERNMENTIDENTIFIEDADMITTED

Exhibit No. 1

21

22

1 THE COURT: Mr. Hinkley and Ms. Cronin.

2 MR. HINKLEY: Good morning, Your Honor.

3 May I call the case, Your Honor?

4 THE COURT: Would you please?

5 MR. HINKLEY: This is the United States of America
6 versus Darian Tensley. It is docketed to 3:15-CR-108.

7 This is the date, time and place set for a guilty
8 plea and immediate sentencing of Mr. Tensley.

9 The record should reflect, Your Honor, that he is
10 before the Court this morning. He is represented by counsel,
11 Attorney Ingrid Cronin. I'm here on behalf of the United
12 States.

13 We note that there is no plea agreement. The
14 Defendant has agreed to plead guilty to the indictment that's
15 been filed, as I will modify on the record, and I can get into
16 that right now if the Court wishes.

17 I would note that the indictment filed returned by
18 the grand jury charges him with a violation of Title 18, United
19 States Code, Section 111(a) and (b), and that is assault of a
20 federal officer.

21 He has agreed to plead guilty to a violation of Title
22 18, United States Code, Section 111(a), which would be a lesser
23 included offense and would not include Subsection B.

24 That would mean that he is pleading guilty to having
25 physically contacted during the assault which results in a

1 penalty of up to eight years.

2 THE COURT: Good morning, Mr. Tensley.

3 MR. TENSLEY: How are you doing?

4 THE COURT: Mr. Tensley, I have been informed that
5 you wish to enter a plea of guilty to the charges, is that
6 correct?

7 MR. TENSLEY: Yes.

8 THE COURT: Mr. Tensley, before accepting a plea, it
9 is necessary for the Judge to ask a lot of questions. I
10 apologize for that, but it is necessary to make sure you know
11 what you are giving up when you plead guilty, and that I am
12 confident that it is a voluntary decision on your part. So I
13 apologize for all the questions, but they are necessary.

14 Darian, I believe you are 38 years old, is that
15 right?

16 MR. TENSLEY: Yes.

17 THE COURT: The first thing we should do is swear you
18 in.

19 Would you raise your right hand?

20 DARIAN TENSLEY, having been duly sworn or affirmed according to
21 law, testified as follows:

22 THE COURT: So now you are under oath, and it is
23 imperative that you answer the questions truthfully, otherwise
24 you could be charged with perjury or false statements. So bear
25 with me.

1 You did say you were 38?

2 MR. TENSLEY: Yes.

3 THE COURT: And where are you from?

4 MR. TENSLEY: Clearwater, Florida.

5 THE COURT: How far did you go in school?

6 MR. TENSLEY: Ninth grade.

7 THE COURT: And you read and write the English
8 language, correct?

9 MR. TENSLEY: Yes.

10 THE COURT: Have you had any drugs or alcohol in the
11 last 24 hours?

12 MR. TENSLEY: No, nothing but my allergy medication.

13 THE COURT: Have you ever been treated for a mental
14 condition?

15 MR. TENSLEY: No.

16 THE COURT: And Ms. Cronin is representing you.
17 Are you satisfied with her?

18 MR. TENSLEY: I have been treated for mental since
19 2003.

20 THE COURT: I don't know what you said.

21 MR. TENSLEY: I was treated for psychological.

22 MR. HINKLEY: He's being treated for psychological
23 issues, Your Honor. He is, yes.

24 THE COURT: Darian, how long ago was that?

25 MR. TENSLEY: 2003.

1 THE COURT: Are you taking any medication for that?

2 MR. TENSLEY: Yes. I'm taking three medications.

3 THE COURT: What kind of medications do you take?

4 MR. TENSLEY: Zoloft, Buspar and Elavil.

5 THE COURT: Does that affect your ability to
6 understand what I said so far?

7 Have you understood everything I have said so far?

8 MR. TENSLEY: Yes, but it makes me fade in and out.

9 MR. HINKLEY: He says he does understand, but it
10 makes him fade in and out.

11 THE COURT: At any time when we're going through
12 this, if you don't understand what I'm saying, just indicate
13 that to me, okay?

14 MR. TENSLEY: Okay.

15 THE COURT: Let gets back to Ms. Cronin.

16 Are you satisfied with her representation with you in
17 this matter?

18 MR. TENSLEY: At this time I am.

19 THE COURT: She is standing right next to you. The
20 only reason she is here is to protect you.

21 So as we go through this, she is standing right next
22 to you. At any time you want to, just lean over and talk to
23 her.

24 If you want to, just let me know, just wave your
25 hand, and you can step to the back of the courtroom and talk to

1 her privately, if you want that. Okay?

2 MR. TENSLEY: Yes.

3 THE COURT: So I will ask you a number of questions
4 and make statements, and if you don't understand what I'm
5 saying, just indicate that to me, and I will do my best to
6 rephrase or to explain the matter further. Okay?

7 MR. TENSLEY: Yes. Thank you.

8 THE COURT: Now, it's my responsibility to explain to
9 you your Constitutional Rights and how they are affected by you
10 pleading guilty, and that is what we're doing now. We are
11 entertaining your plea of guilty to the charge.

12 The first is that you understand that you don't have
13 to plead guilty today. Do you understand that?

14 MR. TENSLEY: Yes.

15 THE COURT: And if you didn't plead guilty, at a time
16 in the immediate future, we would call a number of prospective
17 jurors here to this courtroom. Okay?

18 MR. TENSLEY: Yes.

19 THE COURT: And these people would come from all over
20 Northeastern Pennsylvania, and you and Ms. Cronin would
21 participate in selecting 12 of those people.

22 MR. TENSLEY: Yes.

23 THE COURT: They would represent the jury, and they
24 would sit over there in the jury box, and they would hear all
25 the testimony, and at the conclusion of the trial, they would

1 render a verdict of guilty or not guilty.

2 Do you understand that?

3 MR. TENSLEY: Yes.

4 THE COURT: Now, I can best explain to you the effect
5 of you pleading guilty on your Constitutional Rights. Okay?

6 MR. TENSELY: Yes.

7 THE COURT: So just for illustration purposes, I just
8 want to talk to you about your rights without considering you
9 being guilty or not guilty.

10 These are the rights that you possess. Okay?

11 MR. TENSLEY: Okay.

12 THE COURT: So if we had pursued that course, and you
13 continued to plead not guilty, we would have this trial, and
14 that jury would hear the case.

15 Do you understand that?

16 MR. TENSLEY: Yes.

17 THE COURT: And at that trial, you would be presumed
18 innocent of the charges.

19 Do you understand that?

20 MR. TENSLEY: Yes.

21 THE COURT: And the Government would have to -- Mr.
22 Hinkley and company, the Government, would have to prove you
23 guilty beyond a reasonable doubt.

24 Do you understand that?

25 MR. TENSLEY: Yes.

1 THE COURT: And if you had pursued that course, you
2 would not have to prove you were innocent.

3 In fact, you wouldn't even have an obligation to
4 present any evidence on your behalf.

5 Do you understand that?

6 MR. TENSLEY: Yes.

7 THE COURT: And the reason for that is, the burden of
8 proof -- you would have no burden of proof whatsoever. The
9 burden would always be on the Government, and that burden would
10 be to prove you guilty beyond a reasonable doubt.

11 Do you understand that?

12 MR. TENSLEY: Yes, I do.

13 THE COURT: At trial, you would be entitled to be
14 represented by Ms. Cronin, and through her to confront and
15 cross-examine any witness who might appear to testify against
16 you.

17 Do you understand that?

18 MR. TENSLEY: Yes.

19 THE COURT: At trial, you would be permitted to
20 testify -- I'm sorry -- to call witnesses to appear and testify
21 on your behalf, if you so desired.

22 Do you understand that?

23 MR. TENSLEY: Yes.

24 THE COURT: And do you understand that you could only
25 be convicted; in other words, you could only be found guilty by

1 that jury if the jury unanimously found you guilty of the
2 charges, which means, Darian, all 12 jurors would have to agree
3 on your guilt before you could be found guilty of the charges?

4 Do you understand that?

5 MR. TENSLEY: Yes.

6 THE COURT: And at trial, you would have the right to
7 testify, if you choose to do so, but you would also have the
8 right not to testify. That would be your choice.

9 If you chose not to testify, I would instruct the
10 jury that they could not draw any adverse inference with regard
11 to your failure to testify.

12 Do you understand that?

13 MR. TENSLEY: Yes.

14 THE COURT: So these are the principles that I want
15 to talk to you about.

16 You understood everything I said so far, right?

17 MR. TENSLEY: Yes.

18 THE COURT: Now, obviously, these rights that I have
19 just explained to you contemplate you pleading not guilty,
20 having a jury trial and let the jury determine your guilt or
21 innocence.

22 Do you understand that?

23 MR. TENSLEY: Yes.

24 THE COURT: But the first question that I asked you
25 here this morning was, I have been informed, Mr. Tensley, that

1 you wish to enter a plea of guilty, and you said, yes, Judge, I
2 do, right?

3 MR. TENSLEY: Yes.

4 THE COURT: So if you entered a plea of guilty, there
5 won't be any trial, there won't be any jury, and you will have
6 surrendered or waived or given up these Constitutional Rights
7 that I just discussed with you.

8 Do you understand that?

9 MR. TENSLEY: Yes.

10 THE COURT: So is it your desire to enter a plea of
11 guilty and to give up these Constitutional Rights?

12 MR. TENSLEY: Yes.

13 THE COURT: And you think it's in your best interest
14 to do so?

15 MR. TENSLEY: Yes.

16 THE COURT: And if you enter a plea of guilty, and
17 it's accepted by the Court, you won't be able to withdraw your
18 plea if you're unhappy about the sentence I impose.

19 Do you understand that?

20 MR. TENSLEY: Yes.

21 THE COURT: Now, Darian, you are charged with the
22 following crime: Assault on a Federal corrections officer.

23 Do you understand that?

24 MR. TENSLEY: Yes.

25 THE COURT: Now I'm going to ask Mr. Hinkley if he

1 would tell you, for the record, what the elements of that
2 offense are.

3 MR. HINKLEY: Certainly, Your Honor.

4 As I had indicated at the beginning of this
5 proceeding, the Defendant is pleading guilty to the indictment
6 charging him with a violation of Title 18, United States Code,
7 Sections 111(a) and 111(a) only.

8 That's a felony that indicates that he has forcibly
9 assaulted a correctional officer and made contact with the
10 officer during the assault.

11 Now, there are three elements to this crime. The
12 first is that the Defendant forcibly assaulted James Siedel,
13 the corrections officer in this particular case. Second, that
14 the Defendant did so while Mr. Siedel was engaged in or on
15 account of his official duties. Third, that the Defendant made
16 physical contact during the assault.

17 THE COURT: Those are the three elements.

18 Do you understand those, Darian?

19 MR. TENSLEY: I understand.

20 THE COURT: You understand?

21 MR. TENSLEY: Yes.

22 THE COURT: Now I'm going to ask Mr. Hinkley if he
23 would put on the record what you did, and then I will come
24 back, and I will ask you, Darian, if you admit that you did
25 these things. So please listen to Mr. Hinkley.

1 MR. HINKLEY: Thank you, Your Honor.

2 On August 14th, 2013, around 6:30 in the morning,
3 Officer James Siedel, a correctional officer at the Federal
4 Correction Institute in Schuylkill, was in the food service
5 area when he attempted to conduct a random pat-down search of
6 the Defendant, Darian Tensley, who was an inmate at the
7 institution at that time.

8 While he was performing this pat-down search from
9 behind, Mr. Tensley quickly turned around, and Mr. Siedel then
10 stood up. At that point, Mr. Tensley punched the correctional
11 officer twice in the face -- once in the face.

12 THE COURT: Once?

13 MR. HINKLEY: Once in the face.

14 THE COURT: Do you understand that?

15 Do you admit that you did the things he says you did?

16 MR. TENSLEY: Not in that order.

17 THE COURT: Do you admit or deny that you did the
18 things he says you did? That's the question. It's not what
19 order they came in.

20 Do you admit that you did these things?

21 MR. TENSLEY: Yes.

22 THE COURT: You do?

23 MR. TENSLEY: Yes.

24 THE COURT: Now, the maximum penalty under the
25 statute is?

1 MR. HINKLEY: It's eight years in prison, Your Honor,
2 a \$250,000 fine, up to three years of supervised release which
3 would be served at the conclusion of and in addition to any
4 term of imprisonment, as well as a \$100 special assessment.

5 THE COURT: Do you understand that?

6 MR. TENSLEY: Yes.

7 THE COURT: Are you entering this plea according to
8 your own free will?

9 Has anyone forced you or persuaded you to enter a
10 plea of guilty?

11 Are you entering this plea of guilty according to
12 your own free will?

13 Has anyone forced you to plead guilty?

14 MR. TENSLEY: No.

15 THE COURT: There has been no plea agreement, is that
16 correct?

17 MR. HINKLEY: That is correct.

18 The Defendant is pleading guilty open to the
19 indictment as modified by today's proceedings.

20 THE COURT: Has anyone promised you what the sentence
21 will be in this case?

22 MR. TENSLEY: No, no promises.

23 THE COURT: No promises have been made.

24 I just want to talk to you for a moment about the
25 Sentencing Reform Act of 1984.

1 Under that, that act was created, the United States
2 Sentencing Commission, and they issued guidelines for Judges to
3 follow in determining what the sentence will be in a criminal
4 case such as this.

5 Do you understand that?

6 MR. TENSLEY: Yes.

7 THE COURT: And have you and Ms. Cronin talked about
8 the sentencing commission guidelines and how they might apply
9 to your case?

10 MR. TENSLEY: Yes.

11 THE COURT: And do you understand that the Court --
12 do you understand what these guidelines do is they establish
13 sentencing ranges which are advisory to the Court?

14 They are not mandatory on the Court, but the Court
15 does consult the guidelines and takes the guidelines into
16 account when they are imposing a sentence on anyone.

17 Do you understand that?

18 MR. TENSLEY: Yes.

19 THE COURT: Do you understand that after it's been
20 determined what guideline range applies to the case, the Judge
21 has the authority to impose a sentence that is more severe or
22 less severe than the sentence that is suggested by the
23 guidelines?

24 Do you understand that?

25 MR. TENSLEY: Yes.

1 THE COURT: And do you understand that if you are
2 sent to prison, a term of supervised release will be imposed
3 after you're released from prison?

4 Do you understand that?

5 MS. CRONIN: Your Honor, I should tell you that I
6 have explained to my client that sometimes when a person is
7 already serving a sentence that has a term of supervised
8 release attached to the term he's presently serving, that
9 sometimes the Court does not add more supervised release, but
10 rather tells --

11 THE COURT: That's true.

12 MS. CRONIN: Your Honor, I believe my client does
13 understand that.

14 THE COURT: A term of supervised release will be
15 imposed, but it would run, under these circumstances,
16 concurrently with what you are presently serving.

17 Do you understand that?

18 MR. TENSLEY: Yes.

19 THE COURT: Do you understand that if you violate
20 your supervised release, the one that you're presently under,
21 you can be returned to prison?

22 Do you understand that?

23 MR. TENSLEY: Yes.

24 THE COURT: And do you understand that under some
25 circumstances, you or the Government may have a right to appeal

1 any sentence that I impose in the case?

2 Do you understand that?

3 MR. TENSLEY: Yes.

4 THE COURT: Do you understand that parole in the
5 Federal system has been abolished, and if you are sentenced to
6 prison, you will not be released on parole?

7 Do you understand that?

8 MR. TENSLEY: Yes.

9 THE COURT: Do you understand that if the sentence is
10 more severe than you expected, you will still be bound by your
11 plea and will have no right to withdraw it?

12 Do you understand that?

13 MR. TENSLEY: Yes, I understand.

14 THE COURT: Do you understand that?

15 MR. TENSLEY: Yes.

16 THE COURT: Do you understand, Mr. Tensley, that the
17 crime that you are pleading guilty to is a felony, and if it's
18 accepted and adjudicated, it can deprive you of valuable Civil
19 Rights, such as the right to vote, the right to hold public
20 office, the right to serve on a jury, the right to possess any
21 kind of a firearm?

22 Sometimes it can affect immigration statuses, and as
23 a consequence of pleading guilty, it may require you to submit
24 to DNA sampling.

25 Do you understand that?

1 MR. TENSLEY: Yes.

2 THE COURT: So we have talked about a number of
3 matters, Darian, over the last half hour.

4 Is there anything that you don't understand?

5 Do you understand everything that I have discussed
6 with you?

7 MR. TENSLEY: Yes, I understand.

8 THE COURT: What did you say?

9 MR. TENSLEY: I understand.

10 THE COURT: So is it still your intention to plead
11 guilty?

12 MR. TENSLEY: Yes.

13 THE COURT: Do you think it's in your best interest
14 to do so?

15 MR. TENSLEY: Yes.

16 THE COURT: How do you plead to the charge, guilty or
17 not guilty?

18 MR. TENSLEY: Not guilty. Oh, yeah, guilty.

19 THE COURT: How does he plead?

20 MR. TENSLEY: Guilty.

21 THE COURT: Do you understand that you have a right
22 to plead not guilty?

23 Are you telling me you are pleading guilty to the
24 charge?

25 MR. TENSLEY: Yes, I'm pleading guilty.

1 MS. CRONIN: Yes.

2 THE COURT: Now, there's a motion for immediate
3 sentencing.

4 MS. CRONIN: Yes, Your Honor.

5 MR. HINKLEY: The Government concurs, Your Honor.

6 THE COURT: Very good. We will grant that motion.

7 MR. HINKLEY: Your Honor, there has been a
8 presentence investigative report prepared by the probation
9 department in anticipation of the guilty plea today, and a copy
10 of that has been provided to the Defendant, his counsel, and
11 Government's counsel. We have all reviewed that presentence
12 investigative report.

13 We note that there is one objection that has been
14 lodged by the defense in regards to a two-level enhancement
15 found by the probation department, which would be Paragraph No.
16 15 of the presentence investigative report on Page 5.

17 The probation department indicates that there is
18 specific offense characteristics, including Correctional
19 Officer James Siedel sustained lacerations to his lips and
20 elbow. Two levels are added because Officer Williams (sic)
21 sustained bodily injury in accord with U.S.S.G. Section
22 2A2.4(b) (2).

23 The defense has objection to that two-level
24 enhancement. That is the only objection I believe there is, so
25 we need to address that at this point.

1 MS. CRONIN: That is correct, Your Honor.

2 THE COURT: Do you want to proceed?

3 MR. HINKLEY: I will do so by calling James Siedel to
4 the witness stand, Your Honor.

5 JAMES SIEDEL, having been duly sworn or affirmed according to
6 law, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. HINKLEY:

9 Q. State your name for the record.

10 A. Jim Leroy Siedel.

11 Q. Mr. Siedel, how are you employed?

12 A. I work with the Department of Justice. I work at FCI
13 Schuylkill.

14 Q. Sir, are you a corrections officer?

15 A. Yes.

16 Q. How long have you held that position?

17 A. Since '94.

18 Q. 1994?

19 A. October of '94 is when I first started.

20 Q. And were you working as a correctional officer on August
21 14th, 2013?

22 A. Yes, I was.

23 Q. And were you that morning involved in an incident with
24 Inmate Darian Tensley?

25 A. Yes, I was.

1 Q. Is Mr. Tensley in the courtroom here today?

2 A. Yes, he is.

3 Q. And could you identify him for the record, please?

4 A. Yes. Mr. Tensley is standing right over there, sir.

5 MS. CRONIN: We will stipulate.

6 MR. HINKLEY: Just to be clear for the record, Your
7 Honor, he has identified Mr. Tensley, the Defendant, here this
8 morning.

9 BY MR. HINKLEY:

10 Q. Would you give just a brief description of what happened
11 in this incident?

12 A. Mr. Tensley was exiting our chow hall area, and at that
13 time, we do random shakedowns of inmates leaving the chow hall
14 to make sure they're not taking anything that they're not
15 supposed to have outside the chow hall. I did a random
16 shakedown on him.

17 At the time I was going down his lower torso, he had spun
18 and hit me as I was standing up, because when I pat him down,
19 I'm patting him down from the backside. He had his arms up
20 like this (indicating). When I went down his lower torso, he
21 spun hitting me.

22 By the time I stood up, he was already facing me, and he
23 just slugged me right in the face.

24 Q. I show you what's been marked as Government Exhibit No. 1
25 for identification purposes.

1 Describe what that is.

2 A. It's a picture of the injuries that I received from Inmate
3 Tensley hitting me.

4 Q. And does it accurately reflect your injuries that day?

5 A. The physical ones, you could see.

6 I actually had -- my upper lip was busted open, too, the
7 inside, because my lips had actually got jammed into my teeth.

8 Q. I will ask you some questions in regards to that in a
9 moment. I will pass this up to the Court.

10 THE COURT: Do you move for its admission?

11 MR. HINKLEY: I do, Your Honor.

12 THE COURT: It's admitted without objection.

13 MS. CRONIN: No objection.

14 (At this time, Government No. 1 was admitted into
15 evidence.)

16 BY MR. HINKLEY:

17 Q. So I take it from your testimony that Mr. Tensley punched
18 you in the face?

19 A. Yes.

20 Q. What type of injuries did you receive?

21 A. I received cuts to both my lips, the inside part of them.
22 I was bleeding from my nose, and in the process of the assault,
23 we took Mr. Tensley down somewhere in that area (indicating), I
24 had hurt my elbow from landing on the floor with Tensley.

25 Q. And these injuries that you received, were they painful?

1 A. Yes, very much so.

2 Q. Did you seek medical attention?

3 A. Yes. I had initially gone to our hospital area where they
4 had looked at me and did an injury assessment.

5 Then, from there, I went to the outside hospital to the
6 emergency room.

7 Q. And what type of treatment did you receive at the
8 hospital?

9 A. The doctors had given me X-rays of my arm, or my elbow
10 area, and they had also reviewed the injuries to my mouth,
11 checked my teeth, to make sure my teeth weren't loose, and also
12 looked at the inside of my lips and everything and made sure I
13 was okay there.

14 Q. Did you receive any sutures or any stitches?

15 A. No. They said that because of it being in the inside of
16 my mouth, they wouldn't give me stitches in my mouth.

17 Q. So that was that?

18 A. I didn't get no stitches.

19 Q. Did you receive any medication?

20 A. He had told me that I'm going to probably have -- because
21 at the time, I had had a headache -- he said that I will
22 probably have headaches for a couple days, and that I could
23 just take something over the counter, and if it got worse, I
24 could come back into the emergency room.

25 So I just took over-the-counter, like, Tylenol and Motrin

1 for the headaches.

2 Q. And how long did the headaches last?

3 A. Roughly, three days.

4 Q. Did you go back to work after this incident?

5 A. Yes. I went back to work the following day.

6 Q. Did you, as a result of this incident, besides the
7 physical injuries you have already described, were there any
8 other effects?

9 A. Well, psychologically, it was a little tough trying to get
10 back to work.

11 I had seen through my career of officers that were
12 assaulted, that it seemed like if they didn't come back, it was
13 very hard to come back, and some of them actually resigned and
14 got other jobs, and I pretty much knew I had to go back in the
15 next day.

16 I was even told from my staff, you know, take a couple
17 weeks off, but I didn't want to. I couldn't move, like, smile
18 and stuff, because my lips were still swollen from the assault,
19 but I knew if I didn't go back, it would be hard.

20 It was very hard psychologically dealing with the issue,
21 too. You know, I got assaulted in front of the inmates I work
22 with every day, in front of my staff members I work with every
23 day, and so I made it back, but, yes, it was very difficult
24 going back.

25 Q. So after the initial treatment you received from the

1 hospital, did you have any other follow-up medical appointments
2 with regards to this incident?

3 A. No. I didn't go back for no follow up.

4 They just told me if I had any dental issues to go to the
5 dentist and everything, but I was good to go. I didn't have
6 any dental issues.

7 MR. HINKLEY: Very good. No further questions.
8 Thank you, sir.

9 CROSS EXAMINATION

10 BY MS. CRONIN:

11 Q. Officer, did you at any time have records that you
12 reported any psychological issues?

13 THE COURT: What?

14 BY MS. CRONIN:

15 Q. Officer, did you have any records to show that you did
16 report any psychological problems to your employer?

17 A. No.

18 Q. Do you have any medical records from the time that you
19 went to the hospital?

20 A. I do have, like, an injury assessment from the hospital
21 that I used to submit to worker's comp.

22 Q. Do you have that with you?

23 A. No, I don't have it with me, ma'am.

24 Q. Did you ever give that to the Government?

25 A. Yes.

1 When I say the Government, I gave it to my employer.

2 Q. Let me ask you, was the assessment that was done at the
3 prison thorough?

4 A. Well, they do an assessment as best as possible, and they
5 tell me if I'm good with that, I can go home, or I can go to
6 the hospital, and I wanted to go to the hospital to be looked
7 at, because they didn't have the X-ray capability and stuff to
8 be checked out properly.

9 Q. So they weren't doing X-rays, but did they do an accurate
10 assessment of your injuries?

11 A. To the best of my knowledge, they did a fairly accurate
12 assessment.

13 Q. What does fairly mean?

14 Did they do an accurate -- did they do an accurate
15 assessment of you injuries?

16 A. They asked me if I wanted to have more assessment there,
17 or I could go to an outside hospital. I chose to go to an
18 outside hospital.

19 Q. Did they record your injuries accurately?

20 A. I know there was an injury assessment done at the
21 institution. I did not actually see it to know how accurate it
22 was, but I went to a hospital outside.

23 Q. Let me show you what I have attached to my sentencing
24 memo. There is no mention here of any cut in your nose, nor is
25 there any evidence of a laceration in your top lip.

1 What it says is, contusion to upper and lower lips. Small
2 laceration, interior lower lip. Small laceration, left elbow.

3 Now, that was not caused by the punch by Mr. Tensley, was
4 it, the left elbow laceration?

5 A. No. Not the actual punch, no.

6 Q. And, in fact, that would be a superficial injury.

7 Nothing was done at the hospital for that either, right?

8 A. Besides X-rays, nothing was done.

9 Q. But there was nothing wrong.

10 The X-rays showed nothing, correct?

11 A. The X-rays showed no broken bones, ma'am.

12 Q. There was no treatment for your elbow at the hospital?

13 A. No.

14 Q. Is it fair to say that there was no treatment for your
15 inner lower lip cut either?

16 A. No, there was no treatment, ma'am.

17 Q. In fact, there was no treatment at the hospital, other
18 than X-rays and an evaluation that there was no damage done?

19 A. That's fair.

20 Q. You were told if the headaches got severe, you should go
21 back to the hospital, is that correct?

22 A. Yes.

23 Q. Did you go back?

24 A. No

25 MS. CRONIN: No further questions, Your Honor.

1 MR. HINKLEY: Nothing further.

2 Thank you, sir.

3 THE COURT: Thank you very much.

4 Anything else?

5 MR. HINKLEY: I have no further evidence with regards
6 to that objection.

7 MS. CRONIN: We maintain our objection to that, but
8 no more evidence. No evidence.

9 THE COURT: What is your objection?

10 MS. CRONIN: My objection, Your Honor, and not for a
11 moment does my objection try to minimize the danger that the
12 officer has in his job and the fact that he was hit. We're not
13 trying to negate that.

14 The injuries simply don't rise to the level that
15 gives the enhancement, and we have laid that out rather clearly
16 in our sentencing memo.

17 It is; one, the injury to this officer was very like
18 that to Officer Mejia-Canales, who was a 2006 Tenth Circuit
19 case in which it's a prison guard who suffered a cut, just as
20 Officer Siedel did being punched in the face and his teeth
21 actually cut and bruised his lips. It's an incredibly similar
22 case.

23 The Judges in the Third Circuit said -- excuse me --
24 the District Court found that that was enough to be bodily
25 injury with the definition of the sentencing guidelines.

1 The only difference in this case is that the officer
2 took the stand and said he got treatment -- not treatment, but
3 examined, and they found no damage, no damage any more severe
4 than happened to this person. There is no requirement -- than
5 happened to Officer Mejia-Canales.

6 Three years later, this officer is talking about some
7 psychological damage, but he didn't miss any work.

8 For all of those reasons, we would ask the Court to
9 realize that there is definite -- harm was done to this
10 officer, and that is why there is the three levels for physical
11 contact added on. There's the enhancement for physical
12 contact, which is three levels in the presentence report.

13 What should not be added on, and our position, is the
14 two levels for bodily injury.

15 THE COURT: Thank you.

16 Mr. Hinkley.

17 MR. HINKLEY: Thank you, Your Honor.

18 As I read the case presented, which is a Tenth
19 Circuit case, which obviously is not controlling, but certainly
20 instructive to the Court here, in that case, the Government
21 presented only photographs, and not very good photographs,
22 according to what the Tenth Circuit indicates with regards to
23 what injuries that particular victim had.

24 What the finding of the Tenth Circuit was is, based
25 on that evidence and that evidence alone, it wasn't sufficient

1 to show that the injury was either painful or lasting, which
2 was required by the Tenth Circuit to show that this particular
3 enhancement would be applicable.

4 I would suggest in this case we have the benefit of
5 Mr. Siedel's testimony, which indicates that it was painful,
6 that he did seek medical attention, and that there were some
7 lasting effects, at least three days of headaches based on what
8 the victim indicated here.

9 I would suggest to the Court that that evidence is
10 more sufficient for a finding of the two-level enhancement
11 under the guidelines.

12 THE COURT: Reviewing the testimony of Mr. Siedel and
13 reviewing the photographs and the circumstances surrounding
14 this, we will overrule the objection. It stands. The
15 objection is denied.

16 We will now proceed to sentence.

17 MR. HINKLEY: With that being the case, Your Honor,
18 the sentencing guideline range in this particular matter is --

19 THE COURT: 33 to 41.

20 MR. HINKLEY: Yes, I believe that is correct, Your
21 Honor.

22 So, perhaps, the Court wants to hear argument.

23 THE COURT: Do you have anything?

24 MR. HINKLEY: I mean, I could make argument with
25 regard to what I think is an appropriate sentence, but usually

1 the Court asks the Defendant and counsel first.

2 THE COURT: No, not necessarily.

3 MR. HINKLEY: If you ask me, Your Honor, the
4 Government would suggest to the Court that a sentence within
5 the guidelines would be appropriate here, based on all the
6 facts and circumstances that are in the presentence
7 investigative report, as well as the testimony of the victim
8 here today.

9 It is a significant sentence. I think it is
10 appropriate, and within the guideline range is what we are
11 recommending the Court do.

12 THE COURT: Okay.

13 Ms. Cronin.

14 MS. CRONIN: Your Honor, as the Court is well aware,
15 this sentence can be consecutive or it can be concurrent to
16 what my client is serving now.

17 Should it be consecutive, he will not begin to serve
18 one day of the sentence that you impose until he's 50 years
19 old.

20 He's had a lot of arrests. Violence is really not
21 something that has been a big part of his life. There's been
22 drugs and driving without a license.

23 As you know from the presentence report and from our
24 sentencing memorandum, my client's start in life was rough. He
25 had two parents who both had huge issues of their own and were

1 unavailable to him.

2 He's not using that as an excuse for how things
3 turned out, but what he's realized now is, after a long
4 incarceration -- he's had two years without incidents -- he is
5 making an effort to get a hold on his fragile psychological
6 situation. He has more meaningful contact with his daughter
7 than he's had in years. He is getting older.

8 We ask the Court to consider a sentence of 24 months
9 as adequate to punish him, to let everybody know that one punch
10 to an officer, even when you're in a food line -- and he had
11 no -- most of the people that I have who punched have had
12 contraband. They've hidden something. He had nothing. He
13 wasn't drunk. He had no contraband. He had no shank. He had
14 no food.

15 He felt he had been touched inappropriately and
16 reacted in a way that he's going to not be able to react in the
17 future, but that is why he did this, not to hide any
18 wrongdoing, not for any vengeance on this particular officer,
19 who I don't believe he knows that well.

20 Given all the circumstances, Your Honor, I would ask
21 the Court to seriously consider a sentence lower than the
22 guidelines.

23 THE COURT: Thank you.

24 Mr. Tensley, do you want to say anything?

25 MR. TENSLEY: On 8/14/13, I don't recall what this

1 officer saying I had done to him, but I recall being beaten by
2 officers in retaliation of this situation, being placed in the
3 SHU for 15 months, and lost contact with family and friends. I
4 got handcuff marks around my wrists, chain marks around my
5 ribs. So I feel like I have been punished enough, because it's
6 not just -- because I think I have been put through enough.

7 They have retaliated on me in multiple ways. I lost
8 the things I was eligible for in my sentence I'm serving now.
9 I'm no longer eligible because of this charge.

10 I have suffered. I believe I have suffered enough
11 with this whole situation that I just want it behind me, but I
12 have talked to certain people and found out through my lawyer
13 that the officer didn't even go to the hospital, you know,
14 because I asked for this, this motion, so I could see what type
15 of injuries the officer had.

16 I would like to apologize to this officer, but that
17 morning, he was coming up my leg, and he went between my
18 buttocks, and I flinched, and from that flinch, all this
19 happened, but when my head hit that wall, I blacked out, so I
20 don't recall hitting the officer, but they say I hit him. My
21 lawyer said I hit him. I haven't seen anything other than the
22 pictures they took of him.

23 But then when you look at the pictures they took of
24 me, they're saying my wounds were old wounds. My wounds was
25 fresh wounds. The officer hit me in my eye, pushed my head

1 into the wall. I was tackled down. I got scars on my legs.

2 So I apologize. It was just that I was going through
3 some things; medication, family, and I just felt like he
4 touched me improperly. Thank you.

5 THE COURT: Thank you.

6 Mr. Tensley, in passing sentence on you, I have taken
7 into consideration the presentence investigation report, the
8 seriousness of the offense, the sentencing memorandum that was
9 filed by Ms. Cronin, your statements and Ms. Cronin's
10 statements, the testimony of Mr. Tensley -- I'm sorry -- of
11 Mr. Siedel and the statements by Mr. Hinkley.

12 The sentence that is imposed, I believe, satisfies
13 the purposes of our Sentencing Act, Section 3553(a), which
14 includes the necessity of deterrence, just punishment, the
15 promotion of respect for the law, protection of the public,
16 assurance of correctional treatment for the Defendant.

17 It reflects full consideration of all the factors,
18 including the nature and the seriousness of the offense, and
19 the history and the characteristics of the Defendant, the types
20 of sentences that are available, the advisory sentencing
21 ranges, and the policies prescribed by our sentencing
22 commission, and we find that the sentence that I will impose is
23 reasonable in light of all of these considerations.

24 This matter here, on August 14th of 2013, at 6:37
25 a.m., Officer Siedel attempted to conduct a random pat-down

1 search of an inmate while Mr. Tensley was leaving the food
2 area, the service area.

3 Siedel attempted to search the Defendant's upper
4 right leg. Tensley swung around and knocked the officer's hand
5 away. Siedel immediately attempted to place the Defendant
6 against the wall to apply hand restraints.

7 Tensley became aggressive, and with a closed fist,
8 punched the officer in the face.

9 Tensley was subsequently restrained by assisting
10 officers.

11 Siedel was medically assessed and treated for
12 contusions to his upper lip and lower lip and a smaller
13 laceration on his elbow and contusion to the base of his left
14 finger.

15 Then he subsequently was examined at the regional
16 hospital in that area. This all happened at FCI Schuylkill.

17 Mr. Tensley is 38 years old. He was born and raised
18 around Clearwater, Florida, and raised by his mother. His
19 father reportedly abused alcohol and the mother sold illicit
20 drugs.

21 Mr. Tensley reports good physical health. He is
22 prescribed medication for a mood disorder. He smoked marijuana
23 prior to being in custody and has participated in substance
24 abuse treatment while in prison by the Bureau of Prisons.

25 He has earned a general equivalent diploma in 2009

1 while he was incarcerated, and he has been in continuous
2 Federal custody since June 11th, 2003.

3 He has an extensive criminal record which began at
4 the age of 10, and his offenses include theft, assault and
5 battery, drug possession and delivery, and a number of traffic
6 violations, and failure to appear and resisting arrest.

7 He has a number of prior convictions; 23 misdemeanors
8 and 15 felonies. Three of the 15 felonies are of an assaultive
9 nature. The others include a number of drug convictions.

10 We have a large number of Federal corrections
11 institutions in the Middle District of Pennsylvania. We may
12 have one of the largest number of corrections institutions in
13 the United States, and it is a serious offense.

14 Mr. Tensley comes before the Court, and he has a
15 terrible -- you have a terrible record. These are
16 circumstances which we just cannot take any chances on. We
17 have to protect all of these people who are serving us in these
18 correctional institutions, and one of them was Mr. Siedel.

19 So I have taken into consideration all of these
20 circumstances; defense counsel's objection to the nature of the
21 assault and the testimony of the victim -- and it could have
22 been much worse -- and I have also taken into consideration all
23 of these people who are on the front line and who are dealing
24 in very difficult circumstances, all of these corrections
25 officers.

1 So, for all of these reasons, now, to wit, this 15th
2 day of June, 2016, pursuant to the Sentencing Reform Act of
3 1984, it is the judgment of the Court that the Defendant, Mr.
4 Tensley, is hereby committed to the custody of the Bureau of
5 Prisons to be imprisoned for a term of 33 months.

6 Now, Mr. Tensley, your exposure when you come before
7 the Court on this charge is 33 to 41 months. I have taken into
8 consideration all of the circumstances that I have outlined,
9 and I am sentencing you on the lowest level of the guidelines,
10 just so you know that.

11 MR. TENSLEY: Thank you.

12 THE COURT: The term of imprisonment imposed by this
13 judgment shall run consecutive to the term of imprisonment
14 imposed by Criminal No. 277-T-23TBM in the U.S. District Court
15 for the Middle District of Florida.

16 We find that the Defendant does not have the ability
17 to pay a fine.

18 The Defendant shall pay to the Clerk of the United
19 States District Court a special assessment of \$100 due
20 immediately.

21 Upon release from imprisonment, he shall be placed on
22 supervised release for a term of 3 years. This term of
23 supervised release shall run concurrently. There is no
24 additional term of supervised release. It shall be run
25 concurrently with the terms ordered by 277-T-23TBM.

1 Within 72 hours of release from custody of the Bureau
2 of Prisons, the Defendant shall report in person to the
3 probation office in the district to which he is released.

4 While on supervised release, he shall not commit
5 another Federal, state or local crime, and shall not possess a
6 dangerous weapon. He shall comply with the standard conditions
7 adopted by our Court, and the following additional conditions:

8 One, he shall cooperate in the collection of a DNA
9 sample.

10 Two, he shall submit to one drug test within 15 days
11 of commencing supervision, and at least two periodic drug tests
12 thereafter for the use of a controlled substance.

13 Three, he shall undergo a mental health evaluation.
14 If recommended, he shall satisfactorily complete a program of
15 outpatient or inpatient mental health treatment, and the
16 Defendant shall have no contact with the victim.

17 Darian, you can appeal your conviction if you believe
18 that your guilty plea was somehow unlawful or involuntary, or
19 if there is some other fundamental defect in the proceedings
20 that was not waived by your guilty plea.

21 You also have a statutory right to appeal your
22 sentence under certain circumstances, particularly if you think
23 the sentence is contrary to law.

24 With few exceptions, any notice of appeal must be
25 filed by you within 14 days of today, the day of your sentence.

1 If you are unable to pay the costs of an appeal, you
2 can apply for leave to appeal in forma pauperis. If you so
3 request, the Clerk of Court will prepare and file a notice of
4 appeal on your behalf.

5 Darian, you made a very bad choice. Counsel has
6 brought out the circumstances under which you took a swing at
7 the officer, but we just -- in addition to everything else, we
8 just can't take a chance on that. These people are on the
9 front line of corrections.

10 Good luck to you, Mr. Tensley.

11 MR. HINKLEY: Thank you.

12 MS. CRONIN: Your Honor, could the Court recommend
13 that the Bureau of Prisons consider a facility in Florida so
14 that he can at some point --

15 THE COURT: Where is he serving now?

16 Oh, he's up here.

17 MS. CRONIN: Up here.

18 He has been removed from his family for a long time.

19 When the time comes, if they could consider Florida.

20 That's where he's going to be living when he's out.

21 THE COURT: I strongly recommend that he serve the
22 remainder of his sentence commencing immediately in Florida.

23 Good luck to you, Darian.

24 (At this time, the proceedings in the above-captioned
25 matter adjourned.)

1

REPORTER'S CERTIFICATE

I, Suzanne A. Halko, Official Court Reporter for the United States District Court for the Middle District of Pennsylvania, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of the within-mentioned proceedings had in the above-mentioned and numbered cause on the date or dates hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my supervision.

Suzanne A. Halko, RMR, CRR
Official Court Reporter

REPORTED BY:

SUZANNE A. HALKO, RMR, CRR
Official Court Reporter
United States District Court
Middle District of Pennsylvania
Scranton, PA 18501-0090

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